

CALIFORNIA ENERGY RESOURCES CONSERVATION  
AND DEVELOPMENT COMMISSION  
RENEWABLES COMMITTEE

HEARING  
ON RENEWABLE PORTFOLIO STANDARD  
PHASE 2 IMPLEMENTATION - DRAFT REPORT

CALIFORNIA ENERGY COMMISSION  
HEARING ROOM A  
1516 NINTH STREET  
SACRAMENTO, CALIFORNIA

MONDAY, JULY 14, 2003

10:00 a.m.

Reported by

Alan Meade

Contract No. 150-01-005

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

John L. Geesman, Commissioner, Presiding Member

STAFF PRESENT

Timothy Tutt, Technical Director

Gabriel Herrera, CCO

Marwan Masri, Technology Systems Division

ALSO PRESENT

Steven Kelly, IEP

Thomas Tanton, Vulcan Power

Jack Pigott, Calpine

William P. Short, Ridgewood Power Services, LLC

Daniel V. Gulino, Ridgewood Renewable Power

Nancy Rader, California Wind Energy Association

William H. Chen, Constellation NewEnergy

Jeff Burks, State of Utah Energy Office

Paul Lacourciere, Thelen, Reid & Priest

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## P R O C E E D I N G S

COMMISSIONER GEESMAN: I'm John Geesman, the Presiding Member of the Commission's Renewables Committee. To my right is my staff advisor, Melissa Jones. I believe Commissioner Boyd may be joining us later this morning, I know he's not feeling particularly well.

This is the committee hearing on Phase Two implementation of the Renewable Portfolio Standard. And with no further ado, I think I'll turn it over to Mr. Tutt.

MR. TUTT: Thank you, Commissioner Geesman. Welcome, everyone. The meeting today, as Commissioner Geesman said, is the committee hearing on the Phase Two decisions for the Renewable Portfolio Standard.

This decision basically covers three elements of the Renewable Portfolio Standard responsibility of the Energy Commission. And those are the distribution rules for supplemental energy payments, the development of a certification process, and the development of an accounting system to track the generation that participates in the Renewable Portfolio Standard.

The preliminary committee draft report

1       that you have before you today -- there's some  
2       copies on the back table -- reflects input from  
3       the May 12th and 13th workshop on these issues and  
4       the written comments received and the expertise of  
5       collaborative staff and our technical support  
6       contractors.

7               We will revise the report as necessary  
8       based on comments today, and written comments that  
9       are due on July 17th, for those who are planning  
10      to submit written comments.

11             Comments that are filed electronically  
12      will be posted on the Commission's website. We  
13      encourage electronic filing because it's easier  
14      for other parties to then see what other  
15      stakeholders are commenting on in the proceeding.

16             We plan to release and adopt a revised  
17      report in September, and from there we will be  
18      explaining the policies that reflect the decisions  
19      made by the committee and the Commission into  
20      guidelines and recommendations for implementation  
21      for these parts of the Renewable Portfolio  
22      Standard, and these guidelines will be adopted  
23      later. We're scheduling to have them drafted and  
24      adopted by early next year.

25             To summarize briefly the recommendations

1       that are included in the document, for  
2       supplementary energy payments the committee is  
3       recommending that the definition of "new" -- new  
4       facilities are eligible for supplementary energy  
5       payments -- existing facilities would not be.

6               And the facilities that will begin  
7       commercial operation on or after January 1st, 2002  
8       would be designated as "new" under this draft  
9       decision.

10              There's also a definition of  
11       "repowered." Again, "repowered" would have to be  
12       repowered on or after January 1st, 2002. The  
13       prime generating equipment would have to be  
14       replaced, and at least 80 percent of the value of  
15       the repowered facility would have to be from the  
16       new capital investments based on tax records.

17              The RPS structure that has been set up  
18       in California is a structure that describes a  
19       series of solicitations in which market price  
20       referents are determined. Most of the contracts  
21       that we expect to have participating will likely  
22       come from those solicitations.

23              There is the possibility and the  
24       flexibility of having bilateral contracts as part  
25       of the RPS. However, due to the structure of

1 developing market price referents it's difficult  
2 to do that for bilateral contracts, and hence this  
3 decision suggests that they are not eligible for  
4 supplemental energy payments.

5 Facilities holding new account awards  
6 from the SB 90 program -- there's approximately 30  
7 facilities that held awards from our previous  
8 renewable energy program that have not yet come on  
9 line, and of these facilities that can participate  
10 in the RPS, they can't additionally receive  
11 supplemental energy payments.

12 They must decide, as part of the  
13 solicitation, to either give up their previous  
14 awards and be eligible for supplemental energy  
15 payments, or to keep their previous awards and not  
16 be eligible for supplemental energy payments.

17 In general, the structure of  
18 supplemental energy payments will follow the  
19 procedures and protocols in the contracts that  
20 they are associated with, which would be between  
21 IOU's and other entities and the generators.

22 And since the amount of PGC funding is  
23 established in law as a limited amount, there  
24 might be some uncertainty at times as to whether  
25 PGC funding is available.

1           The Energy Commission will notify  
2       winning bidders about the availability of PGC  
3       funding and part of the solicitation in a timely  
4       fashion, as described in the decision.

5           In terms of certification, we're  
6       suggesting that pre-certification would be a  
7       useful thing so that the entities that are  
8       interested in participating in a solicitation have  
9       some confidence that they will be eligible when  
10      they participate.

11          We will look for a self-certification  
12      process backed up by spot audits, by information  
13      posted on websites, or on our website, indicating  
14      that the particular generator or entity has  
15      requested self-certification and describing some  
16      of the details of that.

17          And we will reserve the right to request  
18      additional information in cases where we feel that  
19      clarification is required or necessary.

20          In terms of an accounting system, since  
21      the RPS is here today, it's 2003, we will be  
22      adopting the Commission's Power Source Disclosure  
23      Program to provide interim accounting for the  
24      Renewable Portfolio Standard.

25          This program requires disclosure to the



1 Energy Commission of a set of information about  
2 the type of generation procured by entities  
3 covered by the program and the sales of those  
4 entities. We will be adopting that system to  
5 cover the protocols and requirements of the  
6 Renewable Portfolio Standard.

7 In the long run we plan on setting up an  
8 electronic accounting system, hopefully in place  
9 for compliance year 2005, renewable energy  
10 certificate based, and we'll get into the details  
11 of that as we move forward with that system.

12 And there's a lot of things that we've  
13 ended up having to defer, in part to follow the  
14 Public Utility Commission process.

15 Rules for energy service providers and  
16 community choice aggregators are not in place yet,  
17 so it's difficult for us to place any rules for  
18 supplemental energy payments pertinent to those  
19 entities.

20 Again, caps on supplemental energy  
21 payments and allocation such as per year or per  
22 retail seller we feel we can defer until we have  
23 more detail about exactly what market price  
24 referents will be established and when and how the  
25 solicitation process will occur for the initial

1 RPS solicitations.

2 And other things such as preference to  
3 projects that provide tangible benefits to  
4 minority communities or low income populations we  
5 will defer until we, again, have more details on  
6 those.

7 And requirements for public works issues  
8 for labor requirements, prevailing wage and such,  
9 again we will defer until we have more information  
10 on exactly how the solicitations will work.

11 With that relatively brief summary, I  
12 want to turn it back over to the committee for  
13 taking parting comments on supplemental energy  
14 payments.

15 COMMISSIONER GEESMAN: Yes, I think what  
16 we'd like to do is bifurcate today's hearing, and  
17 first focus on comments on SEP's. Are there any  
18 parties that wish to comment on the supplemental  
19 energy payment?

20 VOICE: Great report.

21 (laughter)

22 COMMISSIONER GEESMAN: Well, then I  
23 guess we can move on to our certification and  
24 accounting system. And let me also suggest, if  
25 someone happens to think of something they'd like

1 to say about supplemental energy payments, please  
2 don't feel inhibited from bringing that up.

3 Please come up to the microphone and  
4 identify yourself for our --.

5 MR. GULINO: I just have a quick  
6 question. My name is Dan Gulino, I'm general  
7 counsel with Renewable Energy Power. When you say  
8 SEP's and issues about the SEP's, is that  
9 everything about repowering and all those issues?

10 COMMISSIONER GEESMAN: That are  
11 contained in the report that we've distributed.

12 MR. GULINO: Then I think there might be  
13 some comments. Just to identify myself again -- I  
14 whizzed through that. My name is Daniel Gulino,  
15 G-u-l-i-n-o, I'm general counsel with Ridgewood  
16 Renewable power.

17 And we have a few comments, just  
18 basically clarification, about some issues in the  
19 SEP part of the report. And I have one or two  
20 comments. But first I'll pass it over to Mr.  
21 Short.

22 MR. SHORT: My name is Bill Short, I'm  
23 Vice-President of Power Marketing for Ridgewood  
24 Power. And basically I'm going to turn it over to  
25 Paul, just for an introduction.

1           MR. LACOURCIERE: My name is Paul  
2           Lacourciere, I'm one of the attorneys for  
3           Ridgewood Renewable Energy. I work for Thelen,  
4           Reid & Priest.

5           MR. SHORT: Basically, just let me go  
6           through our issues very briefly. On the  
7           repowering facilities, etc. -- basically, to the  
8           extent possible, the word "tax" I think you should  
9           try to put that in front of the words like basic  
10          and depreciation.

11          It's not quite clear, although I think  
12          the intent was that essentially it's tax basis and  
13          tax depreciation.

14          In addition to that, it may make some  
15          sense to pick up some of the buzz words out of the  
16          tax code, such as for equipment. Refer to Section  
17          1245. And for real estate, Section 1250. Those  
18          are the sections that I think that you're really  
19          dealing with in terms of property from a tax  
20          basis.

21          In addition to that, you've mentioned  
22          land in here as being excluded. You should also  
23          make a specific mention in there that intangible  
24          assets, such as good will, and/or any remaining  
25          value of a power sales contract that might be on a

1 person's books for tax purposes, would be  
2 excluded.

3 I think what we're only trying to do  
4 here is essentially do this on a tax basis for  
5 essentially equipment and essentially structures.  
6 And those are the Section 1245 and 1250 property  
7 classes.

8 Moving on to a little more specific  
9 detail, Ridgewood owns landfill gas power plants  
10 in this state, and we own biomass plants  
11 elsewhere.

12 What we want to do is to make sure that  
13 with respect to actual repowerings themselves --  
14 essentially trying to pull the equipment out --  
15 you give an example of the wind facility where  
16 essentially you're going to completely replace the  
17 wind turbine generator.

18 For landfill that may not be an exact  
19 equivalent. We think that what should be there is  
20 that it should be at a minimum a replacement of  
21 the engine and/or the turbine. Some of them are  
22 engine generator sets, some are turbines coupled  
23 right to generators.

24 And we think that probably makes sense.  
25 In our case, we're probably going to replace the

1 engine in order to bring the facility into  
2 compliance with the new air quality regulations in  
3 the south coast area. And so consequently we  
4 request that that be looked upon as the  
5 replacement and/or the turbine.

6 If you expand this beyond you look at  
7 things like biomass plants, repowering them,  
8 you're probably talking about replacing the  
9 boiler. But not necessarily replacing the  
10 turbine, the generator, the motor control centers,  
11 the switch gear, the substation. Those assets are  
12 probably still going to be there, and they're  
13 still in good and useful working order.

14 Probably what needs to be repowered or  
15 replaced, because of changes in air laws for  
16 example, to make those plants competitive, would  
17 probably be the boiler.

18 So, starting back over in landfill, it's  
19 probably just what you need to do, and I think it  
20 needs to be spelled out so we get a safe harbor  
21 that we know we can work with. Essentially,  
22 replacement of the engine but not necessarily the  
23 generator on landfill, or the compressors.

24 MR. GULINO: The issue, quite frankly,  
25 is what is the definition of "new" prime

1 generating equipment. Does it include everything  
2 or just -- for example, in our case it would just  
3 be the engines. We would leave the switch gear  
4 and all these other things.

5 MR. SHORT: Going on a little bit more  
6 in details. Essentially, we have our landfills.  
7 A lot of equipment is not owned by us, in a  
8 typical landfill it's never owned by the  
9 generator. And that's really the landfill gas  
10 collection system, the flare, as well as the  
11 compressors.

12 And these are owned by the landfill  
13 entities, who simply gather the gas together and  
14 to flare. What we're doing is essentially buying  
15 that gas upwind of the flare and combusting it in  
16 our facilities.

17 So to the extent there's a cost to a  
18 landfill gas collection system, etc., it's not  
19 going to show up on our books.

20 We wanted to specifically make clear  
21 that third party assets like that are excluded. I  
22 doubt seriously in the biomass world there is much  
23 of that, but you could in theory have some fuel  
24 handling equipment owned by third parties located  
25 at the site of the biomass facility. And that

1       should be, again, removed from essentially the tax  
2       basis.

3               MR. GULINO: I think that certain  
4       definitions of a landfill facility -- depending on  
5       where you are -- the facility would include  
6       certain equipment like the flare, and we just want  
7       to make sure for purposes of here, for determining  
8       whether you're repowered, it's just the facilities  
9       that the person that is repowering owns and has on  
10      their tax books.

11             We think it's clear, but a little more  
12      clarification would be helpful.

13             MR. SHORT: Basically, we noticed  
14      there's a little bit of what we call somewhat of  
15      an inconsistency. There's going to be in the --  
16      the investor-owned utilities are obviously going  
17      to go out for fossil-fired contracts under a  
18      competitive bid basis.

19             And to the extent that they do go out  
20      there, and they do actually procure, renewable  
21      generators may want to bid for those. It may turn  
22      out that during that period of time that that bid  
23      goes out it may be high gas prices, and therefore  
24      there should be high electricity prices.

25             We want to be able to bid for those, and



1 if we so qualify, we want to be able to come back  
2 here and basically file applications if we qualify  
3 for SEP payments here.

4 And again, it's a competitive  
5 solicitation, whereas fossil generation and  
6 renewable compete against it. To the extent we  
7 end up being awarded a contract there we think  
8 those contracts should qualify, just like  
9 contracts under the RPS solicitations by the  
10 utilities.

11 MR. GULINO: I have one final point of  
12 clarification I think we would like to see  
13 addressed, and specifically it's on page 19 where  
14 you talk about the process -- it's in the middle  
15 of page 19 -- where you talk about the process of  
16 potentially awarding PGC funds.

17 In the middle we talk about things --  
18 for example, in the middle paragraph which begins  
19 "however", the last sentence talks about "the  
20 committee recommends that the Commission will  
21 notify winners of their eligibility in the amount  
22 of funds that are available."

23 And then you go on to the next paragraph  
24 where you talk about "potential" PGC funds. And  
25 one of the three items that we have to show here

1 in order to get these funds is an executed PA with  
2 the utility.

3 I guess one of the things I'm confused  
4 about, in my role as general counsel, is what do  
5 the words "potential availability" mean, so that I  
6 know what I'm going to get, if anything, before I  
7 enter into a contract with the utility?

8 I'm not speaking out of school here.  
9 Some of the feedback we're getting from some of  
10 the utilities is they're taking a position where  
11 the PGC funds are between the generator and the  
12 CEC. They don't want to have anything to do with  
13 it.

14 So this language leads me to conclude  
15 that I have to put a condition precedent in my  
16 contract, if I can get it, from the utility which  
17 says if I don't get the funds I'm looking for from  
18 the CEC I can terminate my contract.

19 I just wanted to make a note of that,  
20 that that's what I see here, and see if there's  
21 some way that I know that I'm going to be awarded  
22 some funds if I get an award from the utility and  
23 I'm going through with negotiations.

24 So that when I sign that contract I  
25 don't have to worry about either getting that

1 condition precedent, or being left in a situation  
2 where I've got a contract with Southern Cal Edison  
3 and no PGC funds to the extend I need them.

4 MR. HERRERA: Gabe Herrera.  
5 Commissioners, I think I should respond to that.  
6 Part of the situation here that we're dealing with  
7 is the fact that --

8 MR. GULINO: I don't know who you--?

9 MR. HERRERA: Gabriel Herrera, I'm with  
10 the California Energy Commission in the Legal  
11 office. One of the things we recognize that the  
12 Energy Commission does not have the authority to  
13 do is to award funding award agreements, actually  
14 grant agreements, until the projects have passed  
15 CEQA.

16 And that is because the Energy  
17 Commission must be informed of the environmental  
18 consequences of these projects. The problem is  
19 that at the time you guys bid on these  
20 solicitations, of course, you're not going to be  
21 at the point where you necessarily know what the  
22 environmental impacts are, which means we're going  
23 to have to pass the NEPA or the CEQA review in  
24 advance.

25 So that's what the Energy Commission can

1 provide, is some sort of notice to the winning  
2 bidders that at least there is a certain sum of  
3 money set aside for them, and that, based on a  
4 pre-screening that we've done, the project looks  
5 to be eligible.

6 MR. GULINO: I'm okay from the  
7 environmental aspects of it, because if I don't  
8 pass the environmental I probably can't operate,  
9 and I don't get the funds anyway.

10 I guess what I was mainly concerned  
11 about -- it might be just my misunderstanding and  
12 not being totally clear on what is kind of a  
13 confusing process from here and the CPUC -- is I  
14 don't want to put my company in a position where  
15 I've got a contract say with Southern Cal Edison  
16 where without the PGC funds that's a breakeven at  
17 best or a loss.

18 And I don't want to be in a position  
19 where they say, well the funds were available,  
20 there was some potential for this, but there were  
21 more people who won than we originally thought, so  
22 rather than getting five mils you're getting two  
23 mils, and that turns my project into an uneconomic  
24 project.

25 I go back to Southern Cal Edison and

1       they say well, I don't care. Legally I can do  
2       that in my contracting, depending on how forgiving  
3       Southern Cal Edison or PG&E may be, but my  
4       understanding from being in the CPUC side of this  
5       is that they're taking the position that's your  
6       business.

7                You signed a prepay with me, you go get  
8       the PGC funds to the extent you can.

9                MR. HERRERA: And I think all the  
10       developers, unless they've already got a project  
11       that's already in the development phase and it's  
12       passed CEQA, will need to have some sort of  
13       conditions in their agreements with the utilities  
14       to basically allow them to back out if for some  
15       reason SEP's aren't approved by some sort of  
16       funding award agreement at the Energy Commission.

17               MR. GULINO: So I guess the extent of  
18       what I'm asking for is perhaps the CEC to use  
19       whatever influence it has on the CPUC to use its  
20       influence on the utilities to grant these  
21       reasonable condition precedents so that I'm not in  
22       the position where I'm in a long-term contract  
23       that's not economic.

24               MR. LACOURCIERE: That's exactly where  
25       we're headed. In the PUC process we encountered a

1 lot of challenges to make sure -- there's this  
2 whole chicken and egg problem.

3 We need the SEP award in order to be  
4 economic, and the utilities are saying you're  
5 going to execute a contract with us and then  
6 you're on your own for the SEP award. If there's  
7 no SEP money that's your problem, not ours.

8 So we need some help, some coordination  
9 through the Energy Commission and the PUC to make  
10 sure there's no real disconnect at the end of the  
11 day.

12 MR. MASRI: This is Marwan Masri, Energy  
13 Commission. Is this the RPS process?

14 MR. LACOURCIERE: This would be the RPS  
15 proceeding. What was originally our 0110-024,  
16 which will be part of a new proceeding.

17 MS. JONES: Can I ask a question? is  
18 that something that you would envision putting  
19 under the standard terms and conditions of  
20 contracts?

21 MR. TUTT: I don't know that it could  
22 fit there, it possibly could. What I was going to  
23 suggest is the Commissions and the collaborative  
24 staff are committed to working out as seamless and  
25 smooth a process as possible so that this all

1 works together.

2 We do intend to notify winners of  
3 solicitations that there is a certain amount of  
4 supplemental energy payment funding available for  
5 them should they proceed forward, sign a contract,  
6 pass CEQA, and come on line.

7 Now, we can't sign a funding award  
8 agreement, but we don't intend to be in a position  
9 where somebody will win a solicitation and then  
10 come to us and we'll say "sorry, there's not  
11 sufficient funds available as expected given your  
12 proposed contract with the IOU."

13 MR. GULINO: Quite frankly, if that's  
14 going to be the case I'm fine. If there's sort of  
15 a situation where they say to my company you've  
16 got this money if you do A, B, and C. So long as  
17 I do A, B, and C I've got that money, I'm okay.

18 Because if I don't do any one of those  
19 requirements I don't have any project and I don't  
20 get the funds and I'm not selling to the utility.  
21 That makes me feel a lot more calm.

22 MR. HERRERA: And I think that's  
23 correct. The idea is that once we send out this  
24 notice to the bidders that that money was  
25 available, was potentially available for them,

1       that that money would then not be used for some  
2       other purpose or allocated to some other winning  
3       bidder.

4               MR. GULINO:   Okay.   As I said, just  
5       reading through this with the terms "potential" it  
6       just brought that concern to my mind.   I'm not  
7       sure if we have anything else?

8               MR. SHORT:   I just want to address one  
9       more issue.

10              MR. HERRERA:   A quick question for Mr.  
11       Short, if possible?   You identified intangibles  
12       should not be considered, and that should be made  
13       explicit in terms of the tax basis.   What, as a  
14       matter of evaluating existing equipment, would  
15       intangibles be considered as part of the tax basis  
16       of existing equipment?

17              MR. SHORT:   I doubt it seriously, but  
18       one can never tell.

19              MR. HERRERA:   Okay.   So just to cover  
20       our bases.

21              MR. SHORT:   Yes, I'm just covering the  
22       bases.   We were looking at -- we bought some  
23       facilities that were used at the time.   To the  
24       extent we may have put some good will on our books  
25       for tax purposes and we clearly put the power



1 sales contracts on the books as an intangible  
2 asset.

3 And it actually was being depreciated  
4 over, let's say what was about a ten year life,  
5 and it turned out to only really have a five year  
6 life. So we have to do an adjustment to the  
7 extent we can for tax.

8 We will, but we may not be able to write  
9 that tax basis of that power sales contract off at  
10 the end of its expiration, which will be in '05.

11 MR. TUTT: I thank the Ridgewood team  
12 for their comments, and encourage them to submit  
13 written comments. I think we can benefit, from  
14 understanding how to write this tax basis  
15 information in the decision or in subsequent  
16 guidelines, from your expertise.

17 MR. GULINO: We will be submitting  
18 summary comments, too. Thank you.

19 COMMISSIONER GEESMAN: Thank you. Other  
20 comments on the supplemental energy payments or on  
21 the certification and accounting system. Jack?

22 MR. PIGOTT: Good morning, it's Jack  
23 Pigott with Calpine. And I just have a few  
24 comments. For the most part we support the  
25 inclusions of the draft decision, and think that

1       they look very good and should work for all the  
2       parties.

3               I think that there are some areas that  
4       need further clarification, and they're along the  
5       same lines as Ridgewood's comments. A slightly  
6       different bent. My comments focus on the repower  
7       section, and the first comment deals with the  
8       definition of prime generating equipment and the  
9       sentence in the first paragraph on page 11 that  
10      proposes that, in order for something to be  
11      considered a repower, that new equipment must be  
12      installed.

13             And for a number of our geothermal  
14      plants, the type of repower that we would most  
15      likely do and in fact that we have done on a unit  
16      or two, is a replacement of the steam path of the  
17      turbine. In that case you open the turbine casing  
18      and replace the rotors and turbine shaft with a  
19      more efficient unit.

20             And that's really the guts of the  
21      turbine, but you still use the same casing, which  
22      in many cases is custom designed. And it's  
23      pointless to go out and buy a new one.

24             And the same thing with the generator.  
25      Frequently there's no point in replacing it,

1       because it's perfectly good, new ones aren't more  
2       efficient. And so there's really no point.

3               I thought that the same paragraph should  
4       further clarify that the equipment could be new or  
5       refurbished, but that it should have the attribute  
6       that it substantially enhances the facilities'  
7       performance, either through increased output,  
8       greater fuel efficiency, or improved environmental  
9       characteristics. So that in other words you're  
10      not just replacing it with the same equipment  
11      again.

12             And at the end of the paragraph you had  
13      an example of what needed to be done for a wind  
14      generator, and you could put the sentence, another  
15      example of a repower facility is a geothermal  
16      power plant, in which the turbine has been  
17      retrofitted with a more efficient steam patent.

18             The second comment deals with the use of  
19      tax records, and we think that is a good idea.  
20      However, you have to keep in mind that many  
21      renewable projects, and I think most geothermal  
22      projects in California, have been financed with a  
23      sale leaseback type structure, and where the  
24      Lessor now owns the facility.

25             And they're frequently financial

1 institutions, and they're not the same  
2 organization that will be doing the retrofit. In  
3 our case we'll be doing the retrofit, we're the  
4 lessee.

5 I think that will be the case for a  
6 number of projects like this, so we'll have our  
7 set of financial records and tax returns, the  
8 lessor will have their set, and you really need to  
9 look at the combination. But then you'll probably  
10 have the added problem of lessors frequently not  
11 wanting to divulge their tax information.

12 So it may not be readily available. And  
13 one way to do it might be to look at the financing  
14 documents and what the price was that the project  
15 was sold for, and then apply the depreciation  
16 rules to come up with what the taxable basis  
17 is.

18 So those are the two issues there,  
19 and I'll further elaborate in written comments.  
20 The final comment is, on page 12, the last  
21 sentence in the second paragraph said that it  
22 could be desirable to establish guidelines for  
23 facilities to repower in stages.

24 And I think that that's a good idea, in  
25 particular for facilities that have already been  
repowered and that may or may not meet the 80

1       percent threshold. There should be the  
2       opportunity for them to do additional work to  
3       bring them up to the 80 percent. Those are my  
4       comments.

5               COMMISSIONER GEESMAN: Thank you, Jack.

6               MR. HERRERA: Jack, can I ask you a  
7       quick question before you go. In terms of  
8       adjusting your tax basis, if you kept the casing  
9       on that turbine and essentially replaced all the  
10      innards, how would you document that on your tax  
11      returns?

12              MR. PIGOTT: Well --

13              MR. HERRERA: Would the casing already  
14      have been depreciated down to nothing?

15              MR. PIGOTT: Well, that's -- the casing  
16      will be on the lessor's tax return, and it could  
17      be depreciated if it were long enough and  
18      depreciated the life it had, the tax depreciation  
19      had gone down to zero. But that's not always the  
20      case. It could be something less.

21              It will be depreciated along with the  
22      rest of the geothermal power plant that's on the  
23      lessor's books. For the retrofit, that would be  
24      on our books, and if we did it this year it would  
25      be at its full -- you know, the tangible parts

1 would be capitalized for tax purposes and we would  
2 then depreciate that.

3 But that would be on our tax return as  
4 opposed to the lessors.

5 MR. HERRERA: Thanks, Jack. Look  
6 forward to the written language there again,  
7 because I know the seam path replacement is  
8 something that's not typical in many technologies,  
9 but we want to try and count it as the repower if  
10 it fits.

11 COMMISSIONER GEESMAN: Other comments?  
12 Hi, Nancy.

13 MS. RADER: Good morning, Commissioners.  
14 Nancy Rader with the California Wind Energy  
15 Association. I thought you did a real nice job on  
16 the draft report and I just had one comment I  
17 wanted to make. I might have a few more in my  
18 written comments.

19 But it was on the issue of what is  
20 "new." You decided that one fixed date would be  
21 more straightforward to implement than requiring  
22 something to be new as of the date of the RFP or  
23 whatever the rule was in the past auctions.

24 I just want to point out that I think  
25 that would be slightly inconsistent with the out-

1 of-state requirements of new facilities, which,  
2 according to the legislative language, have to be  
3 developed for sale under contract.

4 Which implies that it has to be  
5 developed for the contract that it's getting under  
6 the RPS. And I think it's important to establish  
7 similar guidelines for instate facilities so that  
8 we don't run afoul of the commerce clause.

9 The more we can keep the definitions the  
10 same for in and out of state facilities the safer  
11 we're going to be. So that's my only thought,  
12 because there didn't seem to be a substantive  
13 problem with the idea of having "new" be as of the  
14 date of the auction.

15 So, if you could just consider that  
16 aspect. And that's all I had for today. Thanks.

17 COMMISSIONER GEESMAN: Other comments?  
18 Going once -- Tom?

19 MR. TANTON: I'm Tom Tanton representing  
20 Vulcan Power. More a followup to Jack Pigott from  
21 Calpine's comment regarding performance criteria  
22 for repowering, so that it should substantially  
23 increase the performance either economically or  
24 efficiency or whatnot.

25 I would simply add that that be

1 originally designed, rather than as may have  
2 degraded over time. In other words, if something  
3 is simply brought back to the original design  
4 basis that would not be a repowering.

5 COMMISSIONER GEESMAN: Thank you. Other  
6 comments? Don't hold back. Anybody? Steven?

7 MR. KELLY: Steven Kelly with  
8 Independent Energy Producers. And I was just  
9 thinking about what Nancy was saying about the  
10 definition of "new" and trying to tease out the  
11 differences between fixing a hard date and then as  
12 an alternative, moving forward with each  
13 procurement.

14 In the past we had asked for just fix a  
15 date. And the way we were thinking of it was that  
16 the distinction of -- the efficiency of just  
17 fixing a date would be that anybody who came after  
18 that would be by definition eligible for  
19 supplemental energy payments once and only once,  
20 as you've described in some of your other rules.

21 I guess I would have a concern if that  
22 date moves or -- given that you can only receive  
23 the payments once, or eligibility for the  
24 supplemental energy payments once and only once --  
25 I'm not sure that moving the eligibility date



1 forward is going to improve that.

2 I'm thinking of a generator who might  
3 bid in an auction and not win, and then is he  
4 eligible to bid in a subsequent auction down the  
5 road? If I understood what Nancy was describing,  
6 maybe not.

7 And I don't think it matters as a matter  
8 of actually -- because the real issue is who's  
9 eligible for the supplemental energy payments?  
10 And they're only eligible once, and when are we  
11 going to fix that time.

12 So I'm just thinking through what Nancy  
13 was describing. I'm not sure it's going to  
14 improve the efficiency of determining who's  
15 eligible for once and only one time for those  
16 payments.

17 And it may create some confusion if you  
18 bid and lose, didn't receive anything, will you be  
19 eligible for the next auction? So if I could just  
20 dialogue on that, I don't know, because I've only  
21 had about 30 seconds to think about it. That's my  
22 observation.

23 COMMISSIONER GEESMAN: Thanks, Steven.

24 MR. GULINO: This is Dan Gulino from  
25 Ridgewood again. I'd like to just say on this

1 issue that Nancy brought up, I understand that you  
2 only get the award once, but we should have a date  
3 that allows a facility that loses an auction one  
4 time to continue to do that, if ultimately they do  
5 get an award.

6 So anything that facilitates that,  
7 Ridgewood would be in favor of.

8 MR. CHEN: Good morning, Mr. Chairman,  
9 members of the Commission. Bill Chen with  
10 Constellation NewEnergy. I'm here on behalf of my  
11 company, a retail energy service provider in the  
12 state, and also the Alliance for Retail Energy  
13 Markets, to raise the issue of supplemental energy  
14 payments for entities other than utilities who  
15 have the ability to enter into long-term  
16 contracts.

17 I understand that this phase is not  
18 going to be addressing ESP compliance, and that's  
19 going to be deferred until the next phase. But my  
20 concern and our concern is that important issues  
21 that will be decided in this proceeding have  
22 impacts on our companies and our customers as  
23 well.

24 One being that the recommendation here  
25 is that SEP's only be paid for contracts with

1 terms of ten years or longer. That's not the  
2 nature of SEP contracts with our customers. We  
3 don't enter into contracts for that length of  
4 term, at least not with current market conditions.

5 And our concern is that if the only  
6 method or way of getting SEP's is to enter into  
7 these long-term renewable contracts, we feel we're  
8 in a conundrum right now. We will not be able to  
9 procure the necessary renewable resources to serve  
10 our customers, given this requirement.

11 I raise this issue now. We probably  
12 will file more in-depth written comments by  
13 Thursday, but I wanted to raise the issue now and  
14 hopefully prompt some discussion. Thank you.

15 COMMISSIONER GEESMAN: Other comments?

16 MR. SHORT: Bill Short for Ridgewood  
17 Power Management on the comments made by  
18 Constellation NewEnergy. This actually is a  
19 problem that we've identified also. And that  
20 consequently we don't know quite how we get to the  
21 community aggregator or the ESP with essentially  
22 our types of power.

23 We may be building small two to five  
24 megawatt facilities that are added on to existing  
25 landfills, and obviously that type of supply would

1 fit very well into essentially a small program of  
2 something like a Constellation NewEnergy.

3 And we're not quite sure how we go out  
4 and contract with that person, because his needs  
5 are going to more or less vary from year to year.  
6 They may grow dramatically, they may shrink  
7 dramatically.

8 And how exactly do I contract through  
9 him and get SEP funds. We're not quite sure how  
10 it works. We think there should be some dialogue  
11 on that, and it may need to be reopened in due  
12 course and time. Thank you.

13 COMMISSIONER GEESMAN: Let me ask you.  
14 Do you think the statute permits that variance?

15 MR. SHORT: I'm not sure. I really read  
16 this thing over and over before I came out here,  
17 on the trip out, and actually again this morning.  
18 And I'm not sure how we handle these small people.  
19 I know how we handle the IOU's.

20 But I don't know how we handle  
21 Constellation NewEnergy and its contemporaries.

22 COMMISSIONER GEESMAN: Other comments?  
23 Well, I would thank everybody for their comment,  
24 and encourage anyone who has not already submitted  
25 written comments to do so by the 17th. I assure

1       you we read those and take them quite seriously  
2       into account.

3               And then we will be on the schedule that  
4       Mr. Tutt outlined earlier. Again, thank you, this  
5       hearing is adjourned.

6               MR. TUTT: Commissioner Geesman? I'm  
7       not sure that the parties may think that only  
8       commenting on the supplemental energy payment  
9       portion. Also, if they have comments on the  
10      certification and accounting system they may have  
11      waited.

12              COMMISSIONER GEESMAN: If I allowed any  
13      ambiguity to get into that, I'm sorry. Were there  
14      any comments on the accounting and certification  
15      system? Sir?

16              MR. BURKS: Thank you, Mr. Chairman. My  
17      name is Jeff Burks. I'm employed by the Utah  
18      Energy Office, the state energy policy  
19      coordinator. But this morning I'm appearing  
20      before you today representing the policy interests  
21      of the Western Governors Association.

22              I want to thank you for the opportunity  
23      for us to appear before you today. One of the key  
24      objectives of WGA is to strengthen regional energy  
25      policy and energy systems in the west, to ensure

1 the region has access to reliable, affordable, and  
2 clean energy.

3 And as the report the staff has prepared  
4 points out, western governors are keenly  
5 interested in a regional certificates-based  
6 generation tracking and accounting system.  
7 Specifically, WGA endorses creation of a single,  
8 independent regional generation tracking system to  
9 provide data necessary to substantiate megawatt  
10 hours generated from renewable energy sources and  
11 support verification tracking and trading of  
12 renewable energy certificates.

13 WGA supports the staff recommendations  
14 supporting the development of the certificates  
15 based tracking and accounting system. In  
16 addition, WGA would like to commend the renewables  
17 committee for its recent decision to allow out-of-  
18 state power to be counted towards meeting  
19 California's RPS requirements.

20 In our opinion, both positions recognize  
21 the physics and the structure of the west's  
22 electric system. WGA believes the western  
23 interconnect is the appropriate geography and a  
24 certificates-based accounting system is the best  
25 mechanism for tracking and verification of

1 compliance with California's RPS.

2           Moreover, we believe an opportunity  
3 exists for the California Energy Commission and  
4 the Western Governor's Association to collaborate  
5 with other states in the development of a  
6 renewable energy generation tracking system that  
7 serves a multitude of state policy and regulatory  
8 purposes, supports commercial transactions with  
9 REC's, and reflects the western interconnect as  
10 the appropriate geography.

11           In collaboration we also believe that we  
12 can take advantage of some economies of scale and  
13 therefore make the development of the system more  
14 economical for all interested parties. We think  
15 this would represent a significant step forward to  
16 efficiently and economically achieve the  
17 objectives of California's RPS, and the Western  
18 Governors renewable energy policy objectives on  
19 renewable energy certificates in a west-wide  
20 generation and tracking system. Thank you very  
21 much.

22           COMMISSIONER GEESMAN: Well, thank you  
23 for your comments. This is a priority of this  
24 Commission, that we need to follow up on. There's  
25 a lot of work that we have deferred out of the

1 necessity of getting California's RPS program up  
2 and running, but it's certainly this committee's  
3 intent to press forward with this.

4 Which includes some of the difficult  
5 questions of trying to establish appropriate  
6 sources of funding and governance for such a west-  
7 wide system. But certainly knowledgeable of and  
8 supportive of the effort the Western Governors  
9 Association made on this, and think it's a very  
10 strong foundation from which we can all build.

11 MR. BURKS: We appreciate that, and  
12 we've appreciated the cooperation and the  
13 participation of the California Energy Commission  
14 staff in the work that we've undertaken to date,  
15 especially the work of Tim talking with us on how  
16 we might dovetail our efforts together. Thank  
17 you.

18 COMMISSIONER GEESMAN: Well, I  
19 appreciate your being out here today. Other  
20 comments on the accounting and certification  
21 system?

22 MR. LACOURCIERE: Paul Lacourciere with  
23 Ridgewood Renewable Energy again. I just wanted  
24 to draw the Commission's attention to page 34 of  
25 the decision, where it talks about the information



1       that's to be identified in the accounting system.

2               And it talks about a REC being fully  
3       aggregated currently. And I just want to  
4       encourage the Commission to go back and take a  
5       second look at the decision as issued to make sure  
6       -- the decision carves out certain fuel use  
7       attributes and fuel related subsidies that were  
8       carved out from what's being transferred to the  
9       utilities.

10              And I just want to make sure that carve  
11       out makes it into the REC accounting system as  
12       well.

13              MR. TUTT: You're speaking of the recent  
14       PUC decision on the RPS?

15              MR. LACOURCIERE: Yes.

16              MR. SHORT: Bill Short from Ridgewood  
17       Power. On another issue on the REC accounting REC  
18       trading system. Obviously this will initially  
19       start out as a REC accounting system.

20              When it moves to a REC trading system we  
21       believe at that point in time there should be some  
22       reopening, or at least re-look, at the bilateral  
23       contract only prohibition for supplemental energy  
24       payments.

25              We believe at that point in time if you

1       move toward REC trading, the concept essentially  
2       of having to bundle the energy with the direct  
3       sale to the IOU for example may need to be re-  
4       looked.

5               In the eastern half of the country,  
6       where we have essentially REC accounting/REC  
7       trading at the moment, we have essentially  
8       disaggregated completely the energy sale away from  
9       this entry, the transfer of the REC.

10              And that's essentially, I think, where  
11      most of the country is headed toward.

12              COMMISSIONER GEESMAN: Other comments on  
13      the accounting and certification system? Comments  
14      on anything else? Thank you, again. And we will  
15      proceed with reviewing written comments. I think  
16      our next action is the September 5th release of  
17      the final draft. Thank you again.

18      (Whereupon, at 10:54, the hearing was adjourned.)

## CERTIFICATE OF REPORTER

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